IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 353 OF 2005.

1. Umesh Raut,
2. Prabhakar Kambli,
3. Krishna Amonkar,
4. Shailesh Narvekar
5. Tukaram Kambli,
6. Gulzar Shaikh
7. Shailaji Namshikar
8. Mahadev Halvegar
9. Ranganath Gawas,
10. Ajit Kalangutkar
11. Riya Ratikant Mapari.
12. Kamlakant Azrenkar.
13. Santosh Salgaonkar.
14. Arjun Kukalekar.
15. Sanjit Mulgaonkar.
16. Ulhas Chari.
17. Navnath Gaonkar.
18. Subhash Gaonkar.
19. Gurudas Kharpalkar.
20. Sundar Suraf.
21. Mangaldas Shetkar.
22. Anil Gaonkar.
23. Baburao Khadapkar.
24. Jeevan Mainekar.
25. Padmanath Chari.
26. Alisha Naik.
27. Pushpa Shirodkar.
28. Prajibala Gad.
29. Vanita Mandrekar.
30. Sharayu Devidas.
31. Ranjana Usgaonkar.
32. Anita Kalangutkar.
33. Sushila Mashelkar.
34. Babita Naik.
35. Reecha Mandrekar
36. Sulaksha Dicholkar.
37. Anna Fernandes
38. Ravita Tari.
39. Manu Naik Gaonkar.
40. Deepa D. Shetkar.

41.Shalini Bhomkar.
42.Pratiksha Naik.
43.Lekha Pannikar.
44.Chaya Parab.
45.Teja Sawant.
46.Laxmi Kanolkar.
47.Tilas Prabhu,
48.Satish Barve.
49.Gokuldas Gaonkar.
50.Hemant Rane.
51.Sandeep Chodankar.
52.Sandeep Pilgaonkar.
53.Sakharam Shet.
54.Digambar Gaonkar.
55.Dinkar Kalsekar.
56.Shridhar Menerikar.
57.Vishwas Gawas.
58.Deelip Kharbe.
59.Sandesh Morajkar.
60.Sanjeevkumar Belekar.
61.Devidas Gaonkar.
62.Santosh Parab.
63.Vinaibhavi Gayak.
64.Shria Pednekar.
65.Anita Kamat,
66.Nutan Korgaonkar/
67.Sadika Bixec.
68.Babita Mandrekar.
69.Rajeshree Salgaonkar.
70.Shilpa Amonkar.
71.Masuda Mirza.
72.Ashok Mayekar.
73.Vidhyadhar Parab.
74.Laxman Naik.
75.Keshav R. Pednekar.
76.Pundalik Kawthankar.
77.Sabaji Sawant
78.Rajendra Dhavale,
79.Lina de Souza,
Petitioners Nos.1 to 79 are
at Shed No. D2, 17 to 21 and
D2 9, Phil Corporation Ltd.,
Bicholim Industrial Estate,
\Bicholim, Goa.

80.Rohini Gaonkar.
81.Asmitha Malik.
82.Annie Fernandes.
83.Shobha Nevgi.
84.Anu Mayekar.
85.Shivaji Naik.
86.Geeta Fadte Dhurbhat.
87.Chaya Salgaonkar
88.Sangeeta Narvekar
89.Sadhana Dhhargalkar
90.Pratibha Naik,
Petitioners Nos.80 to 90 are
at The Technology House,
Tivim Industrial Estate,
Karaswada, Mapusa, Goa. .... Petitioners.

Versus

Phil Corporation Ltd.,
a Company registered under the
Companies Act 1956 and having
its Registered Office at the
Technology House, Tivim
Industrial Estate, Karaswada,
Mapusa, Goa. .... Respondents.

Shri Valmiki Menezes, Advocate for the Petitioners.

CORAM: R.M.S. KHANDEPARKAR, J.

DATE: 2nd MARCH, 2006.

ORAL JUDGMENT:

Heard the learned Advocate for the Petitioners. None present for the respondent.

2. By Order dated 13th October, 2005 respondent was directed to

show cause as to why the petition should not be admitted and disposed of at the motion hearing stage itself. Since none of the defendants have appeared inspite of service of notice, it is apparent that they are not interested in contesting the proceedings. The only grievance which is sought to be made in the petition is that the trial Court inspite of cause having been shown for delay in filing the written statement, the application for condonation of delay has been rejected solely on the ground that the earlier Order dated 31st March, 2005 refusing to extend time for filing written statement by some of the defendants was not challenged.

3. Perusal of the impugned order disclose that the trial Court rejected the application for condonation of delay in filing the written statement solely on the ground that on 31st March, 2005 the request by some of the defendants for extension of period for filing the written statement, was rejected. However, there has been absolutely no consideration of various contentions which were raised on behalf of the petitioners who are the defendants in the suit in support of the application for condonation of delay in filing the written statement.

4. The application which was filed by the petitioners for condonation of delay apparently disclosed that they had approached the Labour Court to obtain copies of certain documents in support of their

contentions which were sought to be raised in the written statement and the copies thereof were necessary for perusal of the Advocate for drafting the necessary written statement. Undoubtedly, the defence was solely based on those documents and that those documents were not in possession of the defendants/petitioners, and on that count they were handicapped in preparing the written statement and therefore there was delay in filing the same. Having clearly established this fact from the materials on the record, the trial Court was not justified in rejecting the application for condonation of delay. Undisputedly, there was an industrial dispute pending before the Labour Court and the Civil Suit was an off-shoot of the said litigation between the parties. In these circumstances, the petitioners were justified in obtaining necessary copies of the documents in those proceedings in support of their defence and on that count having suffered delay in filing the written statement.

5. Even otherwise in the interest of justice , this is a fit case where the trial Court ought to have condoned the delay and ought to have allowed the petitioners to file the written statement. The very fact that the respondent has not chosen to contest these proceedings also disclose that there was tacit consent on their part for such condonation of delay in filing the written statement.

6. In the result, therefore, the petition is allowed. The impugned orders are set aside and the Rule is made absolute in terms of prayer clause (a), subject to payment of costs of Rs.5000/- which has already been deposited in the Court. The same shall be paid to the respondent/plaintiff in case of demand thereof within three months and in case of failure thereof, the same shall be credited to the account of the Legal Aid Services on expiry of the said period.

R. M. S. KHANDEPARKAR, J.

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